

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

State of South Carolina; City of Kershaw,)	C/A No. 3:12-1694-JFA-SVH
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
Jeffrey Pennington, Defendant in error,)	
)	
Defendant.)	
_____)	

The *pro se* plaintiff, Jeffrey Pennington, removed this action from state court relating to three traffic violations which occurred on April 19, 2012 in Kershaw County, South Carolina. This action is related to another action pending in this court, *Pennington v. Kershaw County*, C/A No. 3:12-1509-JFA-SVH, which was transferred to this court from the United States District Court for the Middle District of Georgia. That action alleges false arrest, excessive force, and other constitutional violations stemming from the same April 19, 2012 arrest.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation and opines that this court lacks subject matter jurisdiction over the traffic court case he seeks to remove and thus, the matter should be remanded to state court. Moreover, the Magistrate Judge properly suggests that the instant pleadings are duplicative

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

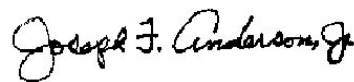
of the claims in the plaintiff's other pending action before this court (C/A 3:12-1509), and that the claims are subject to summary dismissal. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The plaintiff was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on July 31, 2012. The plaintiff filed objections to the Report wherein he wholly disagrees with the Magistrate Judge's findings. The plaintiff argues that his removal is proper under 28 U.S.C. § 1441 and that he has diversity of citizenship. The court finds these objections are without merit and as such, they are overruled.

After a careful review of the record, the applicable law, the Report and Recommendation, and the objections thereto, the court finds the Magistrate Judge's recommendation proper and incorporated herein by reference. Accordingly, this action is remanded to state court.² Plaintiff's motion for leave to proceed *in forma pauperis* is granted.

IT IS SO ORDERED.

June 4, 2013
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge

² Plaintiff's only reference to the state court case is 53107-72GA, presumably in Kershaw County, South Carolina.